

~~HSB 638~~HF 2464 (LSB 5257~~DPHZ~~ (93) 86)

~~SENATE/HOUSE~~ FILE ~~=====~~2464

BY ~~(PROPOSED DEPARTMENT OF TRANSPORTATION BILL)~~COMMITTEE ON APPROPRIATIONS

(SUCCESSOR TO HF 2381)

(SUCCESSOR TO HSB 638)

A BILL FOR

An Act ~~modifying~~eliminating allocations from the statutory allocations fund,~~—~~
~~creating to~~ the Iowa ~~tanks~~comprehensive petroleum underground storage tank fund
and ~~Iowa tanks fund financing program, repealing a tax credit, making transfers~~
~~and appropriations, and including transition and~~the renewable fuel
infrastructure fund, making related changes, including changes related to the
repeal of the environmental protection charge on petroleum diminution, and
including effective date provisions.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I

UNDERGROUND STORAGE TANK FUND ~~AND RENEWABLE FUEL INFRASTRUCTURE FUND~~ ALLOCATIONS
~~----- UNDERGROUND STORAGE TANKS REMEDIAL ACTION TAX CREDIT AND CLAIMS~~

Section 1. Section 321.145, subsection 2, paragraph a, Code 2016, is amended ~~by striking the paragraph to read as follows:~~

a. Moneys shall be deposited into and credited to the following funds:

(1) First, three million five hundred thousand dollars per quarter shall be deposited into and credited to the Iowa comprehensive petroleum underground storage tank fund created in section 455G.3, and the moneys so deposited are a continuing appropriation for expenditure under chapter 455G, and moneys so appropriated shall not be used for other purposes.

(2) Second, seven Seven hundred fifty thousand dollars per quarter shall be deposited into and credited to the renewable fuel infrastructure fund created in section 159A.16, and the moneys so deposited are a continuing appropriation for expenditure under chapter 159A, subchapter III, and moneys so appropriated shall not be used for other purposes.

Sec. 2. Section ~~321.145, subsection 2, paragraph b, Code 2016, is amended to read as follows:~~

~~b. Moneys remaining after the operation of paragraph "a" shall be credited in order of priority as follows:~~

~~(1) An amount equal to four percent of the revenue from the operation of section 321.105A, subsection 2, shall be credited to the department, to be used for purposes of public transit assistance under chapter 324A.~~

~~(2) An amount equal to two dollars per year of license validity for each issued or renewed driver's license which is valid for the operation of a motorcycle shall be credited to the motorcycle rider education fund established under section 321.179.~~

~~(3) The amounts required to be transferred pursuant to section 321.34 from revenues available under this subsection shall be transferred and credited as provided in section 321.34, subsections 7, 10, 10A, 11, 11A, 11B, 13, 16, 17, 18, 19, 20, 20A, 20B, 20C, 21, 22, 23, 24, 25, and 26 for the various purposes specified in those subsections.~~ 455B.302, unnumbered paragraph 3, Code 2016, is amended to read as follows:

A city or county which provides closure or postclosure care on the premises of a sanitary landfill owned by a private agency, shall have a lien upon the property to secure payment for the amount of materials and labor expended by the city or county to perform the required closure or postclosure care on the premises. The lien shall be recordable and collectable in the same manner as provided in section 424.11, Code 2016. The lien shall attach at the time the city or county incurs expenses to provide closure or postclosure care on the premises of the sanitary landfill. The lien shall be valid as against subsequent mortgagees, purchasers, or judgment creditors, for value and without notice of the lien, only upon filing a notice of the lien with the recorder of the county in which the property is located. Upon payment, the city or county shall release the lien. If no lien has been recorded at the time the property is sold or transferred, the property shall not be subject to a lien or claim for any closure or postclosure costs incurred by the city or county.

Sec. 3. Section 455B.392, subsection 7, paragraph d, Code 2016, is amended to read as follows:

d. Cleanup expenses incurred by the state or a political subdivision shall be a lien upon the real estate constituting the hazardous condition site, recordable and collectable in the same manner as provided for in section 424.11, Code 2016, subject to the terms of this subsection. The lien shall attach at the time the state or a political subdivision incurs expenses to clean up the hazardous condition site. The lien shall be valid as against subsequent mortgagees, purchasers, or judgment

creditors, for value and without notice of the lien, only when a notice of the lien is filed with the recorder of the county in which the property is located. Upon payment by the person to the state or a political subdivision, of the amount specified in this subsection, the state or a political subdivision shall release the lien. If no lien has been recorded at the time the person sells or transfers the property, then the person shall not be liable for any cleanup costs incurred by the state or a political subdivision.

Sec. 4. Section 455G.1, subsection 2, unnumbered paragraph 1, Code 2016, is amended to read as follows:

This subchapter applies to petroleum underground storage tanks for which an owner or operator is required to maintain proof of financial responsibility under federal or state law, from the effective date of the regulation of the federal environmental protection agency governing that tank, and not from the effective compliance date, unless the effective compliance date of the regulation is the effective date of the regulation. An owner or operator of a petroleum underground storage tank required by federal or state law to maintain proof of financial responsibility for that underground storage tank is subject to this subchapter and chapter 424.

Sec. 5. Section 455G.3, subsection 1, Code 2016, is amended to read as follows:

1. The Iowa comprehensive petroleum underground storage tank fund is created as a separate fund in the state treasury, and any funds remaining in the fund at the end of each fiscal year shall not revert to the general fund but shall remain in the Iowa comprehensive petroleum underground storage tank fund. Interest or other income earned by the fund shall be deposited in the fund. The fund shall include moneys credited to the fund under this section, section 321.145, subsection 2, paragraph "a", Code 2016, and sections 455G.8 and 455G.9, and section 455G.11, Code 2003, and other funds which by law may be credited to the fund. The moneys in the fund are appropriated to and for the purposes of the board as provided in this subchapter. Amounts in the fund shall not be subject to appropriation for any other purpose by the general assembly, but shall be used only for the purposes set forth in this subchapter. The treasurer of state shall act as custodian of the fund and disburse amounts contained in it as directed by the board including automatic disbursements of funds as received pursuant to the terms of bond indentures and documents and security provisions to trustees and custodians. The treasurer of state is authorized to invest the funds deposited in the fund at the direction of the board and subject to any limitations contained in any applicable bond proceedings. The income from such investment shall be credited to and deposited in the fund. The fund shall be administered by the board which shall make expenditures from the fund consistent with the purposes of the programs set out in this subchapter without further appropriation. The fund may be divided into different accounts with different depositories as determined by the board and to fulfill the purposes of this subchapter.

Sec. 6. Section 455G.3, subsection 5, Code 2016, is amended by striking the subsection.

Sec. 7. Section 455G.4, subsection 3, paragraph b, Code 2016, is amended by striking the paragraph.

Sec. 8. Section 455G.5, unnumbered paragraphs 2 and 3, Code 2016, are amended to read as follows:

The board may enter into a contract or an agreement authorized under chapter 28E with a private agency or person, the department of natural resources, the Iowa finance authority, the department of administrative services, the department of revenue, other departments, agencies, or governmental subdivisions of this state, another state, or the United States, in connection with its administration and implementation of this subchapter or chapter 424 or 455B.

The board may reimburse a contractor, public or private, retained pursuant to this section for expenses incurred in the execution of a contract or agreement. Reimbursable expenses include, by way of example, but not exclusion, the costs

of collecting the environmental protection charge or administering specific delegated duties or powers of the board.

Sec. 9. Section 455G.6, subsection 4, Code 2016, is amended to read as follows:

4. Grant a mortgage, lien, pledge, assignment, or other encumbrance on one or more improvements, revenues, asset of right, accounts, or funds established or received in connection with the fund, including revenues derived from the moneys credited under section 321.145, subsection 2, paragraph "a", Code 2016, and deposited in the fund or an account of the fund.

Sec. 10. Section 455G.8, subsection 2, Code 2016, is amended to read as follows:

2. *Statutory allocations fund.* The moneys credited from the statutory allocations fund under section 321.145, subsection 2, paragraph "a", Code 2016, shall be allocated, consistent with this subchapter, among the fund's accounts, for debt service and other fund expenses, according to the fund budget, resolution, trust agreement, or other instrument prepared or entered into by the board or treasurer of state under direction of the board.

Sec. 11. Section 455G.9, subsection 5, paragraph a, Code 2016, is amended to read as follows:

a. If an owner or operator ceases to own or operate a tank site for which remedial account benefits were received within ten years of the receipt of any account benefit and sells or transfers a property interest in the tank site for an amount which exceeds one hundred twenty percent of the precorrective action value, adjusted for equipment and capital improvements, the owner or operator shall refund to the remedial account an amount equal to ninety percent of the amount in excess of one hundred twenty percent of the precorrective action value up to a maximum of the expenses incurred by the remedial account associated with the tank site plus interest, equal to the interest for the most recent twelve-month period for the most recent bond issue for the fund, on the expenses incurred, compounded annually. An owner or operator under this subsection shall notify the board of the sale or transfer of the property interest in the tank site. Expenses incurred by the fund are a lien upon the property recordable and collectible in the same manner as the lien provided for in section 424.11, Code 2016, at the time of sale or transfer, subject to the terms of this section.

Sec. 12. Section 455G.9, subsections 7 and 10, Code 2016, are amended to read as follows:

7. *Expenses of cleanup not required.* When an owner or operator who is eligible for benefits under this subchapter is allowed by the department of natural resources to monitor in place, the expenses incurred for cleanup beyond the level required by the department of natural resources may be covered under any of the accounts established under the fund only if approved by the board as cost-effective relative to the department accepted monitoring plan or relative to the repeal date specified in section 424.19, Code 2016. The cleanup expenses incurred for work completed beyond what is required is the responsibility of the person contracting for the excess cleanup. The board shall seek to terminate the responsible party's environmental liabilities at such sites prior to the board ceasing operation.

10. *Expenses incurred by governmental subdivisions and public works utilities.* The board shall adopt rules for reimbursement for reasonable expenses incurred by a governmental subdivision or public works utility for sampling, treating, handling, or disposing, as required by the department, of petroleum-contaminated soil and groundwater encountered in a public right-of-way during installation, maintenance, or repair of a utility or public improvement. The board may seek full recovery from a responsible party liable for the release for such expenses and for all other costs and reasonable attorney fees and costs of litigation for which moneys are expended by the fund. Any expense described in this subsection incurred by the fund constitutes a lien upon the property from which the release occurred. A lien shall be recorded and an expense shall be collected in the same manner as provided in section 424.11, Code 2016.

Sec. 13. Section 455G.13, subsection 5, Code 2016, is amended to read as follows:

5. *Lien on tank site.* Any amount for which an owner or operator is liable to the fund, if not paid when due, by statute, rule, or contract, or determination of liability by the board or department of natural resources after hearing, shall constitute a lien upon the real property where the tank, which was the subject of corrective action, is situated, and the liability shall be collected in the same manner as the environmental protection charge pursuant to section 424.11, Code 2016.

Sec. 14. EFFECTIVE DATE. This division of this Act takes effect December 31, 2016.

DIVISION II

ENVIRONMENTAL PROTECTION CHARGE ON PETROLEUM DIMINUTION REPEAL

Sec. 15. Section 424.19, Code 2016, is amended to read as follows:

424.19 Future repeal.

This chapter is repealed effective June 30 December 31, 2016.

Sec. 16. EFFECTIVE UPON ENACTMENT. This division of this Act, being deemed of immediate importance, takes effect upon enactment.

DIVISION III

RENEWABLE FUEL INFRASTRUCTURE FUND ALLOCATION REPEAL

Sec. 17. Section 321.145, subsection 2, paragraph a, Code 2016, as amended by division I of this Act, is amended by striking the paragraph.

Sec. 18. Section 321.145, subsection 2, paragraph b, Code 2016, is amended to read as follows:

b. Moneys remaining after the operation of paragraph "a" shall be credited in order of priority as follows:

(1) An amount equal to four percent of the revenue from the operation of section 321.105A, subsection 2, shall be credited to the department, to be used for purposes of public transit assistance under chapter 324A.

(2) An amount equal to two dollars per year of license validity for each issued or renewed driver's license which is valid for the operation of a motorcycle shall be credited to the motorcycle rider education fund established under section 321.179.

(3) The amounts required to be transferred pursuant to section 321.34 from revenues available under this subsection shall be transferred and credited as provided in section 321.34, subsections 7, 10, 10A, 11, 11A, 11B, 13, 16, 17, 18, 19, 20, 20A, 20B, 20C, 21, 22, 23, 24, 25, and 26 for the various purposes specified in those subsections.

~~Sec. 3. NEW SECTION. 427B.23 Repeal.~~

~~19. EFFECTIVE DATE. This division is repealed July 1, 2016.~~ of this Act takes effect June 30, 2017.

~~Sec. 4. NEW SECTION. 455G.22 Eligible claims and date.~~

~~A claim for a release filed after December 31, 2016, shall not be eligible for payment from the Iowa comprehensive petroleum underground storage tank fund.~~

~~DIVISION II~~

~~IOWA TANKS FUND FINANCING PROGRAM --- UNDERGROUND STORAGE TANK FUND REPEAL~~

~~Sec. 5. NEW SECTION. 16.145 Definitions.~~

~~As used in this part:~~

~~1. "Claimant" means an owner or operator who has received assistance under the Iowa tanks fund or its predecessor, the Iowa comprehensive petroleum underground storage tank fund created in chapter 455G, Code 2017.~~

~~2. "Costs" means all costs, charges, expenses, or other indebtedness incurred by a claimant and determined by the department as reasonable and necessary for carrying out all works and undertakings necessary or incidental to the~~

~~accomplishment of any project.~~

~~3. "Department" means the department of natural resources created in section 455A.2.~~

~~4. "Director" means the director of the department of natural resources.~~

~~5. "Program" means the Iowa tanks fund financing program created pursuant to section 455B.472A.~~

~~Sec. 6. NEW SECTION. 16.146 Iowa tanks fund financing program.~~

~~1. The authority shall cooperate with the department in the creation, administration, and financing of the program.~~

~~2. The authority shall administer the Iowa tanks fund created in section 455B.472A to carry out the purposes of the program and shall manage the funding, administration, investment, restrictions, and disposition of the fund.~~

~~3. The authority shall work cooperatively with the director to distribute financial assistance for work conducted by eligible entities that comply with the requirements of the program. The department shall determine if work completed is eligible for reimbursement from the Iowa tanks fund created for the program.~~

~~Sec. 7. Section 68B.35, subsection 2, paragraph e, Code 2016, is amended to read as follows:~~

~~e. Members of the state banking council, the ethics and campaign disclosure board, the credit union review board, the economic development authority, the employment appeal board, the environmental protection commission, the health facilities council, the Iowa finance authority, the Iowa public employees' retirement system investment board, the board of the Iowa lottery authority, the natural resource commission, the board of parole, the petroleum underground storage tank fund board, the public employment relations board, the state racing and gaming commission, the state board of regents, the tax review board, the transportation commission, the office of consumer advocate, the utilities board, the Iowa telecommunications and technology commission, and any full-time members of other boards and commissions as defined under section 7E.4 who receive an annual salary for their service on the board or commission. The Iowa ethics and campaign disclosure board shall conduct an annual review to determine if members of any other board, commission, or authority should file a statement and shall require the filing of a statement pursuant to rules adopted pursuant to chapter 17A.~~

~~Sec. 8. Section 159A.11, subsection 10, Code 2016, is amended by striking the subsection.~~

~~Sec. 9. Section 159A.13, subsection 6, Code 2016, is amended by striking the subsection.~~

~~Sec. 10. Section 159A.14, subsection 2, Code 2016, is amended to read as follows:~~

~~2. A person may apply to the department to receive financial incentives on a cost-share basis. The department shall forward the applications to the underground storage tank fund board as required by that board for evaluation and recommendation. The underground storage tank fund board may rank the applications with comments and shall forward them to the infrastructure board for approval or disapproval. The department shall award financial incentives on a cost-share basis to an eligible person whose application was approved by the infrastructure board.~~

~~Sec. 11. Section 159A.15, subsection 1, Code 2016, is amended to read as follows:~~

~~1. A person may apply to the department to receive financial incentives on a cost-share basis. The department shall forward the applications to the underground storage tank fund board as required by that board for evaluation and recommendation. The underground storage tank fund board may rank the applications with comments and shall forward them to the infrastructure board for approval or disapproval. The department shall award financial incentives on a cost-share basis to an eligible person whose application was approved by the infrastructure board.~~

~~Sec. 12. Section 323.1, subsection 16, Code 2016, is amended to read as follows:~~

~~16. "Storage tank" means a motor fuel storage tank as defined in section 214.1, including an underground storage tank subject to regulation under chapter 455G.~~

~~Sec. 13. Section 422.7, subsection 2, paragraph u, Code 2016, is amended by striking the paragraph.~~

~~Sec. 14. Section 455B.174, subsection 4, paragraph d, Code 2016, is amended to read as follows:~~

~~d. If a public water supply has a groundwater source that contains petroleum, a fraction of crude oil, or their degradation products, or is located in an area deemed by the department as likely to be contaminated by such materials, and after consultation with the public water supply system and consideration of all applicable rules relating to remediation, the department may require the public water supply system to replace that groundwater source in order to receive a permit to operate. The requirement to replace the source shall only be made by the department if the public water supply system is fully compensated for any additional design, construction, operation, and monitoring costs from the Iowa comprehensive petroleum underground storage tank tanks fund created by chapter 455G section 455B.472A or from any other funds that do not impose a financial obligation on the part of the public water supply system. Funds available to or provided by the public water supply system may be used for system improvements made in conjunction with replacement of the source. The department cannot require a public water supply system to replace its water source with a less reliable water source or with a source that does not meet federal primary, secondary, or other health based standards unless treatment is provided to ensure that the drinking water meets these standards. Nothing in this paragraph shall affect the public water supply system's right to pursue recovery from a responsible party.~~

~~Sec. 15. Section 455B.471, Code 2016, is amended by adding the following new subsections:~~

~~NEW SUBSECTION. 01. "Authority" means the Iowa finance authority.~~

~~NEW SUBSECTION. 1A. "Claimant" means an owner or operator who has received assistance under the Iowa tanks fund or its predecessor, the Iowa comprehensive petroleum underground storage tank fund created in chapter 455G, Code 2017.~~

~~NEW SUBSECTION. 2A. "Costs" means all costs, charges, expenses, or other indebtedness incurred by a claimant and determined by the department as reasonable and necessary for carrying out all works and undertakings necessary or incidental to the accomplishment of any project.~~

~~NEW SUBSECTION. 3A. "Insurance" means any form of financial assistance or showing of financial responsibility sufficient to comply with the federal Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq., or the department's underground storage tank financial responsibility rules.~~

~~NEW SUBSECTION. 7A. "Potentially responsible party" means a person who may be responsible or liable for a release for which the fund has made payments for corrective action or third-party liability.~~

~~NEW SUBSECTION. 9A. "Tank" means an underground storage tank for which proof of financial responsibility is, or on a date definite will be, required to be maintained pursuant to the federal Resource Conservation and Recovery Act and the regulations from time to time adopted pursuant to that Act or successor Acts or amendments.~~

~~NEW SUBSECTION. 10A. "Third-party liability" means both of the following:~~

~~a. Property damage including physical injury to tangible property, but not including loss of use, other than costs to remediate.~~

~~b. Bodily injury including sickness, bodily injury, illness, or death.~~

~~Sec. 16. Section 455B.471, subsection 1, Code 2016, is amended by striking the subsection.~~

~~Sec. 17. Section 455B.471, subsection 3, Code 2016, is amended to read as follows:~~

~~3. "Fund" means the Iowa comprehensive petroleum underground storage tank tanks fund created in section 455B.472A.~~

~~Sec. 18. NEW SECTION. 455B.472A Iowa tanks fund financing program fund created.~~

~~1. The department, in cooperation with the authority, shall establish and administer an Iowa tanks fund financing program for the purpose of reimbursing underground storage tank owners for all or part of the costs of corrective action for previously unknown petroleum releases. The department and the authority may together enter into and provide any agreements, documents, instruments, certificates, data, or information necessary in connection with the operation, administration, and financing of the program consistent with this part, the federal Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq., the rules of the commission, the rules of the authority, and other applicable federal and state law. The authority and the department may act to conform the program to the applicable guidance and regulations adopted by the United States environmental protection agency.~~

~~2. An Iowa tanks fund is created in the state treasury under the control of the authority and consisting of moneys appropriated or transferred to the fund, cost recovery enforcement moneys collected pursuant to section 455B.472B, civil enforcement moneys recovered pursuant to section 455B.477, interest attributable to moneys in the fund, moneys in the form of a devise, gift, bequest, donation, federal or other grant, reimbursement, repayment, judgment, or payment from any source intended to be used for the purposes of the fund, all receipts by the fund, and any other moneys credited to the fund from any public or private source. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys in the Iowa tanks fund shall be credited to the Iowa tanks fund.~~

~~3. Moneys in the Iowa tanks fund shall be used to reimburse tank owners for all or part of the costs of a corrective action for a petroleum release, and for administrative costs of the department.~~

~~4. Moneys in the Iowa tanks fund are not considered part of the general fund of the state, are not subject to appropriation for any other purpose by the general assembly, and the balance of the Iowa tanks fund shall not be considered part of the balance of the general fund of the state. The fund is a separate dedicated fund under the administration and control of the authority as provided under section 16.146.~~

~~5. The state, the general fund of the state, and all other funds of the state other than the Iowa tanks fund are not liable for a claim or cause of action in connection with a tank not owned or operated by the state, or agency of the state. All expenses incurred by the fund are payable solely from the fund and no liability or obligation is imposed upon the state. The liability of the fund is limited to the extent of coverage provided by the applicable account within the fund under which a claim is submitted, subject to the terms and conditions of that coverage. The liability of the fund is further limited by the moneys made available to the fund, and no remedy shall be ordered which would require the fund to exceed its then current funding limitations to satisfy an award or which would restrict the availability of moneys for higher priority sites. The state is not liable for a claim presented against the fund.~~

~~6. The department shall prioritize uses of the moneys in the fund based upon rules adopted by the commission in cooperation with the authority. Department discretion for use of the moneys in the fund shall not be subject to section 455B.478.~~

~~7. a. For the fiscal year beginning July 1, 2017, and each fiscal year thereafter, there is appropriated from the Iowa tanks fund to the department two hundred thousand dollars to support the administration of the fund.~~

~~b. Notwithstanding section 8.33, moneys appropriated in this subsection that remain unencumbered or unobligated at the close of the fiscal year shall not revert but shall remain available for expenditure for the purposes designated until the close of the succeeding fiscal year.~~

~~c. This subsection is repealed July 1, 2022.~~

~~Sec. 19. NEW SECTION. 455B.472B Cost recovery enforcement.~~

~~1. Full recovery sought from owner. The department may seek full recovery from the owner, operator, or other potentially responsible party liable for the released petroleum which is the subject of a corrective action, for which the Iowa tanks fund expends moneys, or for which the former Iowa comprehensive petroleum underground storage tank fund established pursuant to section 455C.3, Code 2017, expended moneys, for corrective action or third-party liability, and for all other costs, including reasonable attorney fees and costs of litigation for which moneys are expended by the fund in connection with the release. When federal cleanup funds are recovered, the federal cleanup funds shall be used solely for the purpose of future cleanup activities.~~

~~2. Limitation of liability of owner or operator. Except as provided in subsection 3, the department shall not seek recovery for expenses in connection with corrective action for a release from an owner or operator eligible for assistance under the Iowa tanks fund except for any unpaid portion of the deductible or copayment. This section does not affect any authorization of the department to impose or collect civil or administrative fines or penalties or fees. The fund shall not be held liable for any third-party liability.~~

~~3. Owner or operator not in compliance, subject to full and total cost recovery. Notwithstanding subsection 2, the liability of an owner or operator shall be the full and total costs of corrective action and bodily injury or property damage to third parties, as specified in subsection 1, if the owner or operator has not complied with the financial responsibility or other underground storage tank rules of the department or with this part and rules adopted under this part.~~

~~4. Treble damages for certain violations.~~

~~a. Notwithstanding subsections 2 and 3, the owner or operator, or both, of a tank are liable to the Iowa tanks fund for punitive damages in an amount equal to three times the amount of any cost incurred or moneys expended by the fund as a result of a release of petroleum from the tank if the owner or operator did any of the following:~~

~~(1) Failed, without sufficient cause, to respond to a release of petroleum from the tank upon, or in accordance with, a notice issued by the director of the department.~~

~~(2) After May 5, 1989, failed to perform any of the following:~~

~~(a) Failed to register the tank, which was known to exist or reasonably should have been known to exist.~~

~~(b) Intentionally failed to report a known release.~~

~~b. The punitive damages imposed under this subsection are in addition to any costs or expenditures recovered from the owner or operator pursuant to this part and in addition to any other penalty or relief provided by this part or any other law.~~

~~c. However, the state, a city, county, or other political subdivision shall not be liable for punitive damages.~~

~~5. Lien on tank site. Any amount for which an owner or operator is liable to the Iowa tanks fund, if not paid when due, by statute, rule, or contract, or determination of liability by the department after hearing, shall constitute a lien upon the real property where the tank, which was the subject of corrective action, is situated, and the liability shall be collected in the same manner as the environmental protection charge pursuant to section 424.11, Code 2016.~~

~~6. Joinder of parties. The department has standing in any case or contested action related to the Iowa tanks fund or a tank to assert any claim that the department may have regarding the tank at issue in the case or contested action. Upon motion and sufficient showing by a party to a cost recovery or subrogation action provided for under this section, the court or the administrative law judge shall join to the action any potentially responsible party who may be liable for costs and expenditures of the type recoverable pursuant to this section.~~

~~7. Strict liability. The standard of liability for a release of petroleum or~~

~~other regulated substance is strict liability.~~

~~— 8. Third party contracts not binding on department — proceedings against responsible party. — An insurance, indemnification, hold harmless, conveyance, or similar risk-sharing or risk-shifting agreement shall not be effective to transfer any liability for costs recoverable under this section. The department may proceed directly against the owner or operator or other allegedly responsible party. This section does not bar any agreement to insure, hold harmless, or indemnify a party to the agreement for any costs or expenditures under this part, and does not modify rights between the parties to an agreement, except to the extent the agreement shifts liability to an owner or operator eligible for assistance under the Iowa tanks fund for any damages or other expenses in connection with a corrective action for which another potentially responsible party is or may be liable. Any such provision is null and void and of no force or effect.~~

~~— 9. Later proceedings permitted against other parties. — The entry of judgment against a party to the action does not bar a future action by the department against another person who is later alleged to be or discovered to be liable for costs and expenditures paid by the Iowa tanks fund. Notwithstanding section 668.5, a potentially responsible party shall not seek contribution or any other recovery from an owner or operator eligible for assistance under the fund for damages or other expenses in connection with corrective action for a release for which the potentially responsible party is or may be liable. Subsequent successful proceedings against another party shall not modify or reduce the liability of a party against whom judgment has been previously entered.~~

~~— 10. Claims against potentially responsible parties.~~

~~— a. Upon payment by the Iowa tanks fund for corrective action or third party liability pursuant to this part, the rights of the claimant to recover payment from any potentially responsible party are assumed by the department to the extent paid by the fund. A claimant is precluded from receiving double compensation for the same injury.~~

~~— b. In an action brought pursuant to this part seeking damages for corrective action or third party liability, the court shall permit evidence and argument as to the replacement or indemnification of actual economic losses incurred or to be incurred in the future by the claimant by reason of insurance benefits, governmental benefits or programs, or from any other source.~~

~~— c. A claimant may elect to permit the department to pursue the claimant's cause of action for any injury not compensated by the Iowa tanks fund against any potentially responsible party, provided the attorney general determines such representation would not be a conflict of interest. If a claimant so elects, the department's litigation expenses shall be shared on a pro rata basis with the claimant, but the claimant's share of litigation expenses is payable exclusively from any share of the settlement or judgment payable to the claimant.~~

~~— 11. Exclusion of punitive damages. — The Iowa tanks fund shall not be liable in any case for punitive damages.~~

~~— Sec. 20. Section 455B.474, subsection 1, paragraph a, subparagraph (6), subparagraph divisions (g), (i), and (j), Code 2016, are amended to read as follows:~~

~~— (g) An owner or operator may elect to proceed with additional corrective action on the site. However, any action taken in addition to that required pursuant to this subparagraph (6), shall be solely at the expense of the owner or operator and shall not be considered corrective action for purposes of section 455C.9 455B.472A, unless otherwise previously agreed to by the board department and the owner or operator pursuant to section 455C.9, subsection 7 455B.472A. Corrective action taken by an owner or operator due to the department's failure to meet the time requirements provided in subparagraph division (c) shall be considered corrective action for purposes of section 455C.9 455B.472A.~~

~~— (i) Replacement or upgrade of a tank on a site classified as a high or low risk site shall be equipped with a secondary containment system with monitoring of the space between the primary and secondary containment structures or other board~~

~~approved department approved tank system or methodology.~~

~~— (j) The commission and the board department shall cooperate to ensure that remedial measures required by the corrective action rules adopted pursuant to this subparagraph (6) are reasonably cost-effective and shall, to the fullest extent possible, avoid duplicating and conflicting requirements.~~

~~— Sec. 21. Section 455B.474, subsection 9, paragraph d, Code 2016, is amended to read as follows:~~

~~— d. The certification of groundwater professionals shall not impose liability on the board, the department, or the fund for any claim or cause of action of any nature, based on the action or inaction of a groundwater professional certified pursuant to this subsection.~~

~~— Sec. 22. Section 455B.474, Code 2016, is amended by adding the following new subsection:~~

~~— NEW SUBSECTION. 11. Prioritization for use of moneys from the Iowa tanks fund for corrective action to address releases from petroleum underground storage tanks.~~

~~— Sec. 23. Section 455B.475, Code 2016, is amended by adding the following new subsections:~~

~~— NEW SUBSECTION. 4. Assure that in combination with existing state statutes and rules governing underground storage tanks, the state will be, and continue to be, recognized by the federal government as having an "approved state account" under the federal Resource Conservation and Recovery Act, 42 U.S.C. §6921--6934, especially by compliance with the Act's subtitle I financial responsibility requirements as enacted in the federal Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §9601 et seq., and the financial responsibility regulations adopted by the United States environmental protection agency at 40 C.F.R. pts. 280 and 281. Whenever possible, this part shall be interpreted to further the purposes of, and to comply and not to conflict with, such federal requirements.~~

~~— NEW SUBSECTION. 5. Coordinate with the Iowa finance authority to process, review, and pay claims under the Iowa tanks fund financing program established in section 455B.472A.~~

~~— Sec. 24. Section 455B.477, subsection 7, Code 2016, is amended to read as follows:~~

~~— 7. The civil penalties or other damages or moneys recovered by the state or the petroleum underground storage tank fund in connection with a petroleum underground storage tank under this part of this division or chapter 455G shall be credited to the Iowa tanks fund created in section 455G.3 and allocated between fund accounts according to the fund budget 455B.472A. Any federal moneys, including but not limited to federal underground storage tank trust fund moneys, received by the state or the department of natural resources in connection with a release occurring on or after May 5, 1989, or received generally for underground storage tank programs on or after May 5, 1989, shall be credited to the fund created in section 455G.3 and allocated between fund accounts according to the fund budget, unless such use would be contrary to federal law. The department shall cooperate with the board of the Iowa comprehensive petroleum underground storage tank fund to maximize the state's eligibility for and receipt of federal funds for underground storage tank related purposes 455B.472A.~~

~~— Sec. 25. Section 455B.478, Code 2016, is amended to read as follows:~~

~~— 455B.478 Judicial review.~~

~~— Except as provided in section 455B.477, subsection 5, and section 455B.472A, judicial review of an order or other action of the commission or the director may be sought in accordance with chapter 17A. Notwithstanding chapter 17A, the Iowa administrative procedure Act, petitions for judicial review may be filed in the district court of the county in which the alleged offense was committed or the final order was entered.~~

~~— Sec. 26. Section 455E.11, subsection 2, paragraph d, subparagraph (3), Code 2016, is amended by striking the subparagraph.~~

~~— Sec. 27. NEW SECTION. 455G.22A Future repeal.~~

~~This subchapter is repealed July 1, 2017.~~

~~Sec. 28. Section 455I.2, subsection 5, paragraph a, Code 2016, is amended to read as follows:~~

~~a. A federal or state program that is subject to the jurisdiction of an agency, including but not limited to programs established by chapters chapter 455B and 455G section 455B.472A, corrective or response actions pursuant to 42 U.S.C. §6901 et seq., and remedial actions under 42 U.S.C. §9601 et seq.~~

~~Sec. 29. TRANSITION PROVISIONS.~~

~~1. Upon repeal of chapter 455G, subchapter I, and the creation of the Iowa tanks fund pursuant to section 455B.472A, as enacted in this Act, all moneys in all funds administered by the Iowa comprehensive petroleum underground storage tank fund board are transferred to the Iowa finance authority for deposit in the Iowa tanks fund. Any moneys credited to any fund administered by the Iowa comprehensive petroleum underground storage tank fund board after July 1, 2017, are transferred to the Iowa finance authority for deposit in the Iowa tanks fund.~~

~~2. Any rule, regulation, form, order, or directive promulgated by the Iowa comprehensive petroleum underground storage tank fund board as required to administer and enforce the provisions relating to the Iowa comprehensive petroleum underground storage tank fund shall continue in full force and effect until amended, repealed, or supplemented by affirmative action of the department of natural resources and the Iowa finance authority.~~

~~3. The Iowa comprehensive petroleum underground storage tank fund board shall administratively close or terminate any remaining liabilities, contracts, outstanding claims, payments, or other obligations for open comprehensive petroleum underground storage tank fund claims in existence on June 30, 2017.~~

~~Sec. 30. EFFECTIVE DATE and IMPLEMENTATION. This division of this Act shall take effect July 1, 2017, except that the department of natural resources and the Iowa finance authority may begin implementation prior to July 1, 2017, to the extent necessary to transition to full implementation of the provisions relating to the Iowa tanks fund and repeal of the Iowa comprehensive petroleum underground storage tank fund.~~

EXPLANATION

The inclusion of this explanation does not constitute agreement with the explanation's substance by the members of the general assembly.

This bill ~~creates the Iowa tanks fund within the Iowa finance authority (authority), and authorizes the authority to cooperate with the department of natural resources to create, administer, and finance the fund.~~ extends the environmental protection charge on petroleum diminution, currently set to expire on June 30, 2016, until December 31, 2016. The bill eliminates the allocation from the statutory allocations fund to the Iowa comprehensive petroleum underground storage tank fund effective December 31, 2016. The bill eliminates the allocation from the statutory allocations fund to the renewable fuel infrastructure fund effective June 30, 2017. The bill makes conforming changes throughout the Code to reflect the changes implemented by the bill.

~~Under current law, funds collected through the environmental protection charge created in Code chapter 424 are deposited into the statutory allocations fund of the department of transportation and allocated to the Iowa comprehensive petroleum underground storage tank fund and the renewable fuel infrastructure fund. The environmental protection charge expires on June 30, 2016. The bill eliminates transfers from the statutory allocations fund to the Iowa comprehensive petroleum underground storage tank fund and the renewable fuel infrastructure fund effective July 1, 2016.~~

~~The bill amends the Code in several instances to update the name of the fund used to compensate the replacement of public water supply wells contaminated with petroleum from the Iowa comprehensive petroleum underground storage tank fund to~~

~~the Iowa tanks fund.~~

~~—The bill creates the Iowa tanks fund financing program within the department of natural resources to be cooperatively administered with the authority. For the fiscal year beginning July 1, 2017, and each fiscal year thereafter, the bill appropriates from the Iowa tanks fund to the department \$200,000 for purposes of supporting the department's protection of the state's groundwater from petroleum releases from leaking underground storage tanks. This appropriation sunsets after five years. The bill allows for cost recovery efforts from potentially liable parties when moneys from the Iowa tanks fund are used during the cleanup of contamination at a tank site.~~

~~—The bill directs the environmental protection commission to adopt rules for prioritizing the use of moneys and eligible expenses from the Iowa tanks fund. The bill includes provisions designed to assure that the Iowa tanks fund will be recognized by the federal government as an approved state account, as the Iowa comprehensive petroleum underground storage tank fund is currently.~~

~~—The bill states that the discretion of the department of natural resources regarding the prioritization of the use of funds in the Iowa tanks fund is not subject to judicial review.~~

~~—The bill repeals the existing Iowa comprehensive petroleum underground storage tank fund and eliminates the Iowa comprehensive petroleum underground storage tank fund board as of July 1, 2017. The bill repeals a local option tax credit available to those who remediate underground storage tanks as of July 1, 2016. The bill provides that claims for releases filed after December 31, 2016, shall not be eligible for payment from the Iowa comprehensive petroleum underground storage tank fund.~~

~~—The bill includes transition provisions providing for the effectiveness of rules, regulations, forms, orders, or directives promulgated by the Iowa comprehensive petroleum underground storage tank fund board until amended, repealed, or supplemented by affirmative action of the department of natural resources and the Iowa finance authority.~~

~~—The portions of the bill related to the transfers from the statutory allocations fund, setting a cut-off date for claims for releases from the Iowa comprehensive petroleum underground storage tank fund, and repealing the tax credit are effective July 1, 2016. The remaining portions of the bill are effective July 1, 2017, except that the department of natural resources and the Iowa finance authority may begin implementation prior to that date.~~

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